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NORTHERN DISTRICT OF CALIFORNIA

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12 *Pro hac vice admittance to be sought

13 Counsel for Plaintiffs and the Proposed Putative Classes

14
15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 TODD BURTON, on behalf of himself and all
18 others similarly situated,

19 Plaintiff,

20 v.

21 TIME WARNER CABLE INC.,

22 Defendant.

CV 12 2828

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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28 ORIGINAL

1 Plaintiff Todd Burton ("Plaintiff"), individually and on behalf of all others similarly
2 situated, by and through his counsel, brings this Class Action Complaint against Defendant Time
3 Warner Cable Inc. ("Time Warner" or "Defendant"). Plaintiff, on his own behalf and on behalf
4 of a class of similarly situated individuals, alleges as follows upon personal knowledge as to
5 himself and his own acts and experiences, and, as to all other matters, upon information and
6 belief, including investigation conducted by his attorneys.

7 **I. NATURE OF THE ACTION**

8 1. Cable and satellite television are a staple in American households, viewed by
9 many to be as ordinary and essential as gas and electric service. Time Warner uses its position
10 as one of the nation's largest providers of cable television to collect personal information – such
11 as names, addresses, social security numbers, and credit card numbers – from tens of millions of
12 consumers across the country.

13 2. After consumers terminate their service with Time Warner, however, and this
14 information is no longer needed to provide service or collect payment, Time Warner continues to
15 maintain personally identifiable information on all of its previous customers indefinitely. This
16 conduct violates the Cable Communications Policy Act, 47 U.S.C. § 551, *et. seq.* ("CCPA"),
17 which requires cable operators to destroy personally identifiable information when it is no longer
18 required for the purpose for which it was collected.

19 3. Moreover, consumers are unaware that their personally identifiable information is
20 retained indefinitely by Time Warner, as Time Warner fails to send annual privacy notices
21 informing consumers that Time Warner continues to retain their information. This conduct
22 constitutes additional violations of CCPA.

23 4. Accordingly, Plaintiffs assert claims on their own behalf and on behalf of the
24 other members of the below-defined Class for violations of CCPA, 47 U.S.C. § 551 (a) & (e),
25 plus additional claims under California state law on behalf of a California Subclass.
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II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, which confers upon the Court original jurisdiction over all civil actions arising under the laws of the United States, and pursuant to 18 U.S.C. §§ 2520 and 2707 and 18 U.S.C. § 1030. This Court also has supplemental jurisdiction over Plaintiffs' state statutory claims and common-law claims under 28 U.S.C. § 1367.

6. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). In the aggregate, Plaintiffs' claims and the claims of the other members of the Class exceed \$5,000,000 exclusive of interest and costs, and there are numerous class members who are citizens of states other than Time Warner.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1301(a)(2), 1391(b)(2), and 1391(c)(2) as: a substantial part of the events and/or omissions giving rise to the claims emanated from activities within this District, and Time Warner conducts substantial business in this District. Specifically, Time Warner provides cable and Internet services for residents and commercial facilities in towns and cities throughout this District, subjecting it to this Court's personal jurisdiction and making it a "resident" of this District for purposes of venue.

III. PARTIES

Plaintiff

8. Todd Burton ("Burton") is a natural person and citizen of the State of California.

Defendant

9. Time Warner is a Delaware corporation headquartered at 60 Columbus Circle in New York City, New York. Time Warner is one of the nation's most prominent cable providers, servicing more than 20 million cable customers. Time Warner provides cable services to customers in 28 states, including the State of California.

IV. FACTUAL BACKGROUND

The Cable Communications Policy Act

10. On October 30, 1984, Congress passed the Cable Communications Policy Act ("CCPA") in order to promote competition among providers of cable services and establish a national policy concerning cable communications and their operators. An important objective of Congress in establishing such a policy was to protect cable subscribers' sensitive personal information from misuse and improper disclosure. To that end, Congress made sure that the Act incorporated privacy guidelines jointly established several years earlier by the 34 nations comprising the Organization for Economic Cooperation and Development.

11. When CCPA was under debate, legislative leaders noted that both common-sense privacy concerns and the constitutional rights of citizens were at stake:

Cable systems, particularly those with a 'two-way' capability, have an enormous capacity to collect and store personally identifiable information about each cable subscriber. Subscriber records from interactive systems can reveal details about bank transactions, shopping habits, political contributions, viewing habits and other significant personal decisions. It is [therefore] important that national cable legislation establish a policy to protect the privacy of cable subscribers. A national policy is needed because, while some franchise agreements restrict the cable operator's use of such information, privacy issues raise a number of federal concerns, including protection of the subscribers' first, fourth, and fifth amendment rights. At the same time, such a policy must also recognize and unnecessarily or unreasonably impede those flows of information necessary to provide the service to the subscribers.

H.R. Rep. 98-934 at 4666-67 (1984).

12. These observations, now nearly 30 years old, are just as relevant today. Subscribers continue to disclose some of their most sensitive identifying information to their cable operator as a condition to entering into a contract for service. Now – far more than ever before – Time Warner and other cable operators are equipped to rapidly collect and indefinitely retain large volumes of this valuable data in their electronic records.

1 13. There are numerous serious and troubling privacy issues implicated by Time
2 Warner's practice of retaining and misusing their former customers' personal information,
3 including the risk of identity theft and conversion of personal financial accounts.

4 14. Accordingly, CCPA affords consumers significant protection with respect to the
5 collection, maintenance, and disclosure of personally identifiable information ("PII") provided
6 by the subscriber to the cable operator.

7 15. Specifically, CCPA requires cable operators to provide annual notice setting forth
8 the "nature of personally identifiable information collected;" "the nature, purpose, and frequency
9 of any disclosure" of that information; the "period during which such information will be
10 maintained;" "the times and place at which the subscriber may have access to such information;"
11 and the limitations imposed on the cable operator by this provision of CCPA. 47 U.S.C. §
12 551(a)(1).

13 16. In addition, CCPA governs the way that cable operators are to destroy the PII of
14 former subscribers. CCPA requires that cable operators must destroy the PII of former
15 subscribers "if the information is no longer necessary for the purpose for which it was collected"
16 and there are no outstanding requests or orders for such information. 47 U.S.C. § 551(e).

17 17. Under CCPA, "personally identifiable information" is not specifically defined.
18 However, the courts have concluded that it broadly encompasses "specific information about the
19 subscriber, or a list of names and addresses on which the subscriber is included."¹

20 ***Time Warner's Collection of Consumers' PII***

21 18. Time Warner has been in existence since 1989, when it was formed through the
22 merger of Time, Inc.'s cable division and Warner Cable. Time Warner has continued to grow
23 rapidly, offering a range of services that includes cable television, DVR services, and digital
24 phone subscriptions. Time Warner serves more than 20 million cable customers, nearly 9
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27 ¹ See, e.g., *Scofield v. Telecable of Overland Park, Inc.*, 973 F.2d 874, 876 fn. 2 (10th Cir. 1992).

1 million high-speed Internet customers, and more than 4 million voice customers.² In 2011, the
 2 company earned nearly \$20 billion in gross revenues and had a profit of approximately \$1.6
 3 billion.³

4 19. Time Warner requests that subscribers provide PII to Time Warner in order to
 5 receive cable service, including social security number, address, phone number, and credit and
 6 debit card information.

7 20. Once Time Warner obtains that information, it maintains a digital record system
 8 with every subscriber's personal information, adding to each consumer's file as they acquire
 9 more information.

10 21. Time Warner's online Privacy Policy provides as follows:

11 We maintain personally identifiable information about subscribers
 12 for as long as it is necessary for business purposes. This period of
 13 time may last as long as you are a subscriber and, if necessary, for
 14 additional time so that we can comply with tax, accounting and
 other legal requirements. When information is no longer needed
 for these purposes, it is our policy to destroy or anonymize it.⁴

15 ***Time Warner's Unlawful Retention of Consumers' PII***

16 22. While Time Warner's Privacy Policy claims that consumer information is
 17 destroyed after it is no longer needed for business, tax, accounting, or legal purposes, in practice,
 18 Time Warner simply retains consumers' PII indefinitely. Moreover, "anonymizing" the data
 19 does not alone constitute compliance with CCPA.

20 23. This indefinite retention of PII is prohibited by CCPA, which requires cable
 21 operators to "destroy personally identifiable information if the information is no longer necessary
 22 for the purpose for which it was collected." 47 U.S.C. § 551(e).

25 ² <http://www.timewarnercable.com/Corporate/about/highlights/default.html> (last visited May 29,
 26 2012).

26 ³ http://en.wikipedia.org/wiki/Time_Warner_Cable (last visited May 29, 2012).

27 ⁴ http://help.twcable.com/html/twc_privacy_notice.html (last visited May 29, 2012).

24. Time Warner also fails to provide CCPA-mandated privacy notices to customers whose accounts have been closed, but whose information is still retained by Time Warner. Those consumers are thus unaware that their information is retained indefinitely by Time Warner.

25. CCPA requires that cable operators provide written notice at least once a year regarding the retention and disclosure of PII, "clearly and conspicuously" informing the consumer of "the nature of personally identifiable information collected ... and the nature of the use of such information; [] the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made; [] the period during which such information will be maintained by the cable operator; [and] the times and places at which the subscriber may have access to such information." 47 U.S.C. § 551(a).

26. After the termination of services, Time Warner fails to provide notice to consumers regarding the type of PII collected and retained, and any disclosure of that information that may have occurred.

Consumers Place a High Value on Their PII

27. At a Federal Trade Commission ("FTC") public workshop in 2001, then-Commissioner Orson Swindle described the value of a consumer's personal information as follows:

The use of third party information from public records, information aggregators and even competitors for marketing has become a major facilitator of our retail economy. Even [Federal Reserve] Chairman [Alan] Greenspan suggested here some time ago that it's something on the order of the life blood, the free flow of information.⁵

⁵ *The Information Marketplace: Merging and Exchanging Consumer Data*, <http://www.ftc.gov/bcp/workshops/infomktplace/transcript.htm> (last visited May 20, 2012).

1 28. Though Commissioner's Swindle's remarks are more than a decade old, they are
2 even more relevant today, as consumers' personal data functions as a "new form of currency"
3 that supports a \$26 billion per year online advertising industry in the United States.⁶

4 29. The FTC has also recognized that consumer data is a new – and valuable – form
5 of currency. In a recent FTC roundtable presentation, another former Commissioner, Pamela
6 Jones Harbour, underscored this point by observing:

7 Most consumers cannot begin to comprehend the types and amount
8 of information collected by businesses, or why their information
9 may be commercially valuable. Data is currency. The larger the
data set, the greater potential for analysis – and profit.⁷

10 30. Recognizing the high value that consumers place on their PII, many companies
11 now offer consumers an opportunity to sell this information to advertisers and other third parties.
12 The idea is to give consumers more power and control over the type of information that they share
13 – and who ultimately receives that information. And by making the transaction transparent,
14 consumers will make a profit from the surrender of their PII.⁸ This business has created a new
15 market for the sale and purchase of this valuable data.⁹
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21 ⁶ See *Web's Hot New Commodity: Privacy*,
22 <http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html> (last visited May
20, 2012).

23 ⁷ *Statement of FTC Commissioner Pamela Jones Harbour* (Remarks Before FTC Exploring
Privacy Roundtable), <http://www.ftc.gov/speeches/harbour/091207privacyroundtable.pdf> (last visited
May 20, 2012).

24 ⁸ *You Want My Personal Data? Reward Me for It*,
25 <http://www.nytimes.com/2010/07/18/business/18unboxed.html> (last visited May 20, 2012).

26 ⁹ See *Web's Hot New Commodity: Privacy*,
27 <http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html> (last visited May
20, 2012).

31. In fact, consumers not only place a high value on their PII, but also place a high value on the *privacy* of this data. Thus, the question is not *whether* consumers value such privacy; the question is "*how much* [consumers] value" that privacy.¹⁰

32. Researchers have already begun to shed light on how much consumers value their data privacy – and the amount is considerable. Indeed, studies confirm that "when [retailers'] privacy information is made more salient and accessible, some consumers are willing to pay a premium to purchase from privacy protective websites."¹¹

33. When consumers were surveyed as to how much they valued their personal data in terms of its protection against improper access and unauthorized secondary use – two concerns at issue here – they valued the restriction of improper access to their data at between \$11.33 and \$16.58 per website, and prohibiting secondary use to between \$7.98 and \$11.68 per website.¹²

34. Given these facts, any company that transacts business with a consumer and then retains that consumer's PII in contravention of statutorily guaranteed privacy protections has thus deprived that consumer of the full monetary value of the consumer's transaction with the company.

Facts Pertaining to Plaintiff Burton

35. In or about August 2002, Burton signed up for Time Warner cable services. In order to activate his service, Time Warner required Burton to provide Time Warner with various forms of PII, including his address, home and work telephone numbers, social security number, and credit card information.

36. In or about December 2009, Burton canceled his service with Time Warner.

¹⁰ Hamm *et al.*, *The Value of Online Information Privacy: An Empirical Investigation* (Mar. 2003) at 2, available at <http://www.comp.nus.edu.sg/~ipng/research/privacy.pdf> (emphasis added) (last visited April 25, 2012).

¹¹ Tsai, Cranor, Acquisti, and Egelman, *The Effect of Online Privacy Information on Purchasing Behavior*, 22(2) *Information Systems Research* 254, 254 (June 2011).

¹² *Id.*

38. Since canceling his service, Burton has never received notice from Time Warner informing him that Time Warner still retains his PII. Specifically, Burton has not received any notices from Time Warner informing him of the nature of the information collected; the nature, purpose and frequency of any disclosure which was made of this information; the period of time during which Time Warner will maintain this information; and the time and place that Burton may gain access to this information.

V. CLASS ACTION ALLEGATIONS

39. Plaintiff brings Count I, as set forth below, on behalf of himself and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class defined as:

All persons in the United States who signed up for cable service with Time Warner, and whose personally identifiable information was retained by Time Warner after the termination of services (the “Retention Class”).

Excluded from the Retention Class are Time Warner and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and any immediate family members thereof.

40. Plaintiff brings Count II, as set forth below, on behalf of himself and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class defined as:

All persons in the United States who signed up for cable service with Time Warner, and who were never issued annual written notices from Time Warner regarding Time Warner's retention or disclosure of their personally identifiable information (the "Notice Class").

1 Excluded from the Notice Class are Time Warner and its subsidiaries and affiliates; all persons
2 who make a timely election to be excluded from the Class; governmental entities; and the judge
3 to whom this case is assigned and any immediate family members thereof.

4 41. Plaintiff brings Counts III-V, as set forth below, on behalf of himself and as a
5 class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of
6 Civil Procedure on behalf of a class defined as:

7 All persons residing in the State of California who signed up for
8 cable service with Time Warner, and whose personally identifiable
9 information was retained by Time Warner after the termination of
services (the "California State Class").

10 Excluded from the California State Class are Time Warner and its subsidiaries and affiliates; all
11 persons who make a timely election to be excluded from the Class; governmental entities; and
12 the judge to whom this case is assigned and any immediate family members thereof.

13 42. The Retention Class, Notice Class, and California State Class shall be referred to
14 collectively as "the Class" below unless otherwise specified.

15 43. Certification of Plaintiff's claims for classwide treatment is appropriate because
16 Plaintiff can prove the elements of his claims on a classwide basis using the same evidence as
17 would be used to prove those elements in individual actions alleging the same claims.

18 44. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the
19 class are so numerous that individual joinder of all Class members is impracticable. On
20 information and belief, there are thousands of consumers who have been affected by Time
21 Warner's wrongful conduct. The precise number of the Class members and their addresses is
22 presently unknown to Plaintiff, but may be ascertained from Time Warner's books and records.
23 Class members may be notified of the pendency of this action by recognized, Court-approved
24 notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings,
25 and/or published notice.

1 **45. Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2)**
 2 **and 23(b)(3).** This action involves common questions of law and fact, which predominate over
 3 any questions affecting individual Class members, including, without limitation:

- 4 a. whether Time Warner engaged in the conduct as alleged herein;
 5 b. whether Plaintiff and the other Class members are entitled to actual, statutory, or
 6 other forms of damages, and other monetary relief and, if so, in what amount(s);
 7 and
 8 c. whether Plaintiff and other Class members are entitled to equitable relief, including
 9 but not limited to injunctive relief and restitution.

10 **46. Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are
 11 typical of the other Class members' claims because, among other things, all Class members were
 12 comparably injured through the uniform misconduct described above.

13 **47. Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).**
 14 Plaintiff is an adequate representatives of the Class because his interests do not conflict with the
 15 interests of the other Class members he seek to represent; he has retained counsel competent and
 16 experienced in complex class action litigation; and Plaintiff intends to prosecute this action
 17 vigorously. The Class members' interests will be fairly and adequately protected by Plaintiff and
 18 his counsel.

19 **48. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**
 20 Time Warner has acted or refused to act on grounds generally applicable to Plaintiff and the
 21 other Class members, thereby making appropriate final injunctive relief and declaratory relief, as
 22 described below, with respect to Class members as a whole.

23 **49. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is
 24 superior to any other available means for the fair and efficient adjudication of this controversy,
 25 and no unusual difficulties are likely to be encountered in the management of this class action.
 26 The damages or other financial detriment suffered by Plaintiff and the other Class members are
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1 relatively small compared to the burden and expense that would be required to individually
 2 litigate their claims against Time Warner, so it would be impracticable for Class members to
 3 individually seek redress from Time Warner's wrongful conduct. Even if Class members could
 4 afford individual litigation, the court system could not. Individualized litigation creates a
 5 potential for inconsistent or contradictory judgments, and increases the delay and expense to
 6 all parties and the court system. By contrast, the class action device presents far fewer
 7 management difficulties, and provides the benefits of single adjudication, economy of scale, and
 8 comprehensive supervision by a single court.

9 **VI. CLAIMS ALLEGED**

10 **COUNT I**

11 **Failure to Destroy Personally Identifiable Information** 12 **Violation of § 551(e) of the Cable Communications Policy Act** **(On Behalf of the Retention Class)**

13 50. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-49 as
 14 though fully set forth herein.

15 51. Time Warner is a "cable operator" as defined by CCPA because Time Warner
 16 provides "cable services," which is "the one-way transmission to subscribers of [] video
 17 programming, or [] other programming service; [and] subscriber interaction, if any, which is
 18 required for the selection or use of such video programming or other programming service." 47
 19 U.S.C. § 522(5) & (6).

20 52. CCPA mandates, among other things, that a cable operator "destroy personally
 21 identifiable information if the information is no longer necessary for the purpose for which is
 22 was collected." 47 U.S.C. § 551(e).

23 53. After Plaintiff's account and the accounts of each of the members of the Retention
 24 Class were terminated, Time Warner continued to maintain Plaintiffs' PII even though such
 25 information was no longer necessary to maintain for the purpose for which it was collected.

26 54. The foregoing conduct violates 47 U.S.C. § 551(e).

1 55. Plaintiff and the Retention Class have suffered injuries as a result of Time
2 Warner's violation of 47 U.S.C. § 551. Time Warner's failure to destroy the PII of Plaintiff and
3 the Retention Class, as required 47 U.S.C. § 551, constitutes injury in the form of a direct
4 invasion of their federally protected privacy rights. In addition, Time Warner's failure to comply
5 with CCPA has deprived Plaintiff and the Retention Class of their ability to make informed
6 decisions with respect to their privacy.

7 56. Moreover, since Plaintiff and the Retention Class purchased cable services from
8 Time Warner, and Time Warner was obligated to comply with CCPA, Time Warner's failure to
9 destroy their PII deprived them of the full value of the services that they bargained and paid for.
10 Because Plaintiff and the Retention Class ascribe monetary value to their ability to control their
11 PII, Plaintiff and the Retention Class have sustained, and continue to sustain, monetary and
12 economic injuries as a direct and proximate result of Time Warner's violation of 47 U.S.C. §
13 551.

14 57. Plaintiff's and the Retention Class' PII constitutes personal property. Time
15 Warner's failure to comply with 47 U.S.C. § 551 has also deprived Plaintiff and the Retention
16 Class of the opportunity to control that personal property for its own financial gain.
17 Accordingly, Plaintiff and the Retention Class has sustained, and continue to sustain, monetary
18 and economic injuries as a direct and proximate result of Time Warner's violation of 47 U.S.C. §
19 551.

20 58. CCPA provides a private right of action to consumers who have been aggrieved
21 by a violation of 47 U.S.C. § 551. Specifically, any person aggrieved by any act of a cable
22 operator violating 47 U.S.C. § 551 may recover "actual damages but not less than liquidated
23 damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is
24 higher." 47 U.S.C. § 551(f)(2)(A).

59. In addition, any person aggrieved by any act of a cable operator violating 47 U.S.C. § 551 may recover punitive damages and “reasonable attorneys’ fees and other litigation costs reasonably incurred.” 47 U.S.C. § 551(f)(2)(B)&(C).

60. Plaintiff, on behalf of himself and the Retention Class, therefore seeks redress as provided by 47 U.S.C. § 551, including liquidated damages to the full extent permitted by CCPA, punitive damages, and reasonable attorneys’ fees and other litigation costs.

COUNT II

Failure to Provide Adequate Notice Violation of § 551(a) of the Cable Communications Policy Act (On Behalf of the Notice Class)

61. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-49 as though fully set forth herein.

62. After the termination of services, Time Warner continued to maintain Plaintiff’s PII and the PII of each of the members of the Notice Class.

63. Plaintiff and each of the members of the Notice Class did not receive a yearly privacy notice from Time Warner as required under CCPA.

64. The foregoing conduct violates 47 U.S.C. § 551(a).

65. Plaintiff and the Notice Class have suffered injuries as a result of Time Warner’s violation of 47 U.S.C. § 551. Time Warner’s failure to issue annual notices under CCPA, as required by 47 U.S.C. § 551, constitutes injury in the form of a direct invasion of the federally protected privacy rights of Plaintiff and the Notice Class. In addition, Time Warner’s failure to comply with CCPA has deprived Plaintiff and the Notice Class of their ability to make informed decisions with respect to their privacy.

66. Moreover, since Plaintiff and the Notice Class purchased cable services from Time Warner, and Time Warner was obligated to comply with CCPA, Time Warner’s failure to issue the requisite annual notices deprived them of the full value of the services that they bargained and paid for. Because Plaintiff and the Notice Class ascribe monetary value to their ability to control their PII, Plaintiff and the Notice Class have sustained, and continue to sustain,

1 monetary and economic injuries as a direct and proximate result of Time Warner's violation of
2 47 U.S.C. § 551.

3 67. Plaintiff's and the Notice Class' PII constitutes personal property. Time Warner's
4 failure to comply with 47 U.S.C. § 551 has also deprived Plaintiff and the Notice Class of the
5 opportunity to control that personal property for its own financial gain. Accordingly, Plaintiff
6 and the Notice Class have sustained, and continue to sustain, monetary and economic injuries as
7 a direct and proximate result of Time Warner's violation of 47 U.S.C. § 551.

8 68. CCPA provides a private right of action to consumers who have been aggrieved
9 by a violation of 47 U.S.C. § 551. Specifically, any person aggrieved by any act of a cable
10 operator violating 47 U.S.C. § 551 may recover "actual damages but not less than liquidated
11 damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is
12 higher." 47 U.S.C. § 551(f)(2)(A).

13 69. In addition, any person aggrieved by any act of a cable operator violating 47
14 U.S.C. § 551 may recover punitive damages and "reasonable attorneys' fees and other litigation
15 costs reasonably incurred." 47 U.S.C. § 551(f)(2)(B)&(C).

16 70. Plaintiff, on behalf of himself and the Notice Class, therefore seeks redress as
17 provided by 47 U.S.C. § 551, including liquidated damages to the full extent permitted by
18 CCPA, punitive damages, and reasonable attorneys' fees and other litigation costs.

19 **COUNT III**

20 **Violation of the California Customer Records Act, 21 Cal.Civ.Code § 1798.80, *et seq.* (On Behalf of the California State Class)**

22 71. Plaintiff adopts and incorporates by reference Paragraphs 1-49 of this Complaint
23 as if fully set forth herein.

24 72. The California Customer Records Act ("CCRA") provides, in pertinent part, that
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1 A business shall take all reasonable steps to dispose, or arrange for
2 the disposal, of customer records within its custody or control
3 containing personal information when the records are no longer to
4 be retained by the business by (a) shredding, (b) erasing, or (c)
5 otherwise modifying the personal information in those records to
6 make it unreadable or indecipherable through any means.

7 Cal.Civ.Code § 1798.81.

8 73. Under the CCRA, "personal information" is defined as

9 any information that identifies, relates to, describes, or is capable
10 of being associated with, a particular individual, including, but not
11 limited to, his or her name, signature, social security number,
12 physical characteristics or description, address, telephone number,
13 passport number, driver's license or state identification card
14 number, insurance policy number, education, employment,
15 employment history, bank account number, credit card number,
16 debit card number, or any other financial information, medical
17 information, or health insurance information[.]

18 Cal.Civ.Code § 1798.80 (emphasis added).

19 74. Plaintiff and the other members of the California State Class cancelled their
20 subscription to and no longer use Time Warner's services. Therefore, Time Warner no longer
21 has any reason to retain the sensitive personal information of Plaintiff and the California State
22 Class. Nonetheless, Time Warner has continued to retain this personal information in its records.

23 75. In addition, on information and belief, Time Warner has not taken a single step
24 toward shredding, erasing, encrypting, or otherwise modifying Plaintiff's and the California State
25 Class' personal information so as to make it unreadable or undecipherable by others.

26 76. Plaintiff and the California State Class have suffered injuries as a result of Time
27 Warner's violation of the CCRA. Time Warner's failure to destroy their PII as required by the
28 CCRA constitutes injury in the form of a direct invasion of their statutory rights. In addition,
Time Warner's failure to comply with the CCRA has deprived Plaintiff and the California State
Class of their ability to make informed decisions with respect to their privacy.

77. Moreover, since Plaintiff and the California State Class purchased cable services
from Time Warner, and Time Warner was obligated to comply with the CCRA, Time Warner's

1 failure to destroy their PII deprived them of the full value of the services that they bargained and
 2 paid for. Because Plaintiff and the California State Class ascribe monetary value to their ability
 3 to control their PII, Plaintiff and the California State Class have sustained, and continue to
 4 sustain, monetary and economic injuries as a direct and proximate result of Time Warner's
 5 violation of the CCRA.

6 78. Plaintiff's and the California State Class' PII constitutes personal property. Time
 7 Warner's failure to comply with the CCRA has also deprived Plaintiff and the California State
 8 Class of the opportunity to control that personal property for its own financial gain.
 9 Accordingly, Plaintiff and the California State Class have sustained, and continue to sustain,
 10 monetary and economic injuries as a direct and proximate result of Time Warner's violation of
 11 the CCRA.

12 79. The CCRA provides a private right of action to consumers. Specifically, it states
 13 that "[a]ny customer injured by a violation of this title may institute a civil action to recover
 14 damages." Cal.Civ.Code § 1798.84(b). In addition, the CCRA provides that "any business that
 15 violates, proposes to violate, or has violated this title may be enjoined." Cal.Civ.Code §
 16 1798.84(e).

17 80. Plaintiff, on his own behalf and on behalf of the other members of the California
 18 State Class, seeks judgment in her favor and against Time Warner, and awarding her and the
 19 other members of the California State Class injunctive relief and the maximum damages
 20 available under Cal.Civ.Code § 1798.84.

21 **COUNT IV**

22 **Breach of Implied Contract** 23 **(On Behalf of the California State Class)**

24 81. Plaintiff adopts and incorporates by reference paragraphs 1-60 and 71-80 of this
 25 Complaint as if fully set forth herein.
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82. Those who subscribed to Time Warner's cable service, including Plaintiff, were required by Time Warner to provide their social security number, address, phone number, and credit card and debit card information.

83. In providing this personal data to Time Warner, Plaintiff and other members of the California State Class entered into an implied contract with Time Warner (the "Contract"). Pursuant to the Contract, Time Warner became obligated to safeguard this data through all reasonable measures. This obligation includes complying with industry standards.

84. The industry standard applicable to the credit-card transaction described above is set forth in Requirement 3.1 of the Data Security Standard (DSS) promulgated by the Payment Card Industry Security Standards Council. Specifically, that standard requires the merchants to implement the following security measures:

Keep cardholder data storage to a minimum by implementing data retention and disposal policies, procedures and processes, as follows.

Implement a data retention and disposal policy that includes:

- Limiting data storage amount and retention time to that which is required for legal, regulatory, and business requirements
- Processes for secure deletion of data when no longer needed
- Specific retention requirements for cardholder data
- A quarterly automatic or manual process for identifying and securely deleting stored cardholder data that exceeds defined retention requirements[.]¹³

85. Time Warner breached its Contract with consumers by failing to adopt and comply with the foregoing industry-standard practices, and by failing to destroy PII after the information is no longer necessary for the purpose for which it was collected.

86. In addition, because the laws existing at the time and place of the making of the Contract are and were incorporated into the Contract, the Contract included obligations for the parties to abide by all applicable laws, including CCPA and the CCRA.

¹³ PCI Security Standards Council LLC, Navigating PCI DDS: Understanding the Intent of the Requirements, v2.0 (October 2010), p. 20.

87. Plaintiff and the California State Class performed their obligations under the Contract by paying the consideration owed to Defendant for the provision of cable service, and by complying with all applicable laws then in force.

88. Time Warner's failure to perform its contractual obligations imposed by CCPA and the CCRA – *i.e.*, the timely destruction of consumers' PII – constitutes a material breach of the Contract.

89. Plaintiff and the California State Class have suffered actual damages as a result of Time Warner's breach in the form of the value Plaintiff and the California State Class ascribe to the confidentiality and timely destruction of their PII. This amount is tangible and can be calculated at trial.

90. Further, a portion of the services purchased by Plaintiff and the California State Class were intended to pay for Time Warner's costs in timely destroying its customers' PII, as required by CCPA and the CCRA.

91. Because Plaintiff and the California State Class were denied services that they bargained and paid for and were entitled to receive—*i.e.*, confidentiality of their PII and timely destruction of same—Plaintiff and the California State Class incurred actual monetary damages in that they overpaid for the services they bargained for.

92. Accordingly, Plaintiff and the California State Class seek an order declaring that Time Warner's conduct constitutes a breach of contract, and awarding Plaintiff and the California State Class damages in an amount to be calculated at trial.

COUNT V

**Violation of Cal. Penal Code § 637.5
(On Behalf of the California State Class)**

93. Plaintiff adopts and incorporates by reference Paragraphs 1-49 of this Complaint as if fully set forth herein.

94. Section 637.5 of the California Penal Code provides in pertinent part:

Individual subscriber viewing responses or other individually identifiable information derived from subscribers *may be retained and used by a satellite or cable television corporation only to the extent reasonably necessary for billing purposes and internal business practices, and to monitor for unauthorized reception of services*. A satellite or cable television corporation may compile, maintain, and distribute a list containing the names and addresses of its subscribers if the list contains no other individually identifiable information and if subscribers are afforded the right to elect not to be included on the list. However, a satellite or cable television corporation shall maintain adequate safeguards to ensure the physical security and confidentiality of the subscriber information.

Cal. Penal Code § 637.5(b) (emphasis added).

95. If a cable operator violates the above section of the California Penal Code, the subscriber may assert a private right of action for invasion of privacy. Section 637.5 provides in pertinent part:

Any aggrieved person may commence a civil action for damages for invasion of privacy against any satellite or cable television corporation, service provider, or person that leases a channel or channels on a satellite or cable television system that violates the provisions of this section.

Cal. Penal Code § 637.5(i) (the "California Penal Code").

96. Plaintiff and the other members of the California State Class cancelled their subscription to and no longer use Time Warner's services. Therefore, Time Warner no longer has any reason to retain the sensitive personal information of Plaintiff and the California State Class. Nonetheless, Time Warner has continued to retain this personal information in its records.

97. In addition, on information and belief, Time Warner has not taken a single step toward shredding, erasing, encrypting, or otherwise modifying Plaintiff's and the California State Class' personal information so as to make it unreadable or undecipherable by others.

98. Plaintiff and the California State Class have suffered injuries as a result of Time Warner's violation of the California Penal Code. Time Warner's failure to destroy their PII as required by the California Penal Code constitutes injury in the form of a direct invasion of their statutory rights. In addition, Time Warner's failure to comply with the California Penal Code

1 has deprived Plaintiff and the California State Class of their ability to make informed decisions
2 with respect to their privacy.

3 99. Moreover, since Plaintiff and the California State Class purchased cable services
4 from Time Warner, and Time Warner was obligated to comply with the California Penal Code,
5 Time Warner's failure to destroy their PII deprived them of the full value of the services that
6 they bargained and paid for. Because Plaintiff and the California State Class ascribe monetary
7 value to their ability to control their PII, Plaintiff and the California State Class have sustained,
8 and continue to sustain, monetary and economic injuries as a direct and proximate result of Time
9 Warner's violation of the California Penal Code.

10 100. Plaintiff's and the California State Class' PII constitutes personal property. Time
11 Warner's failure to comply with the CCRA has also deprived Plaintiff and the California State
12 Class of the opportunity to control that personal property for their own financial gain.
13 Accordingly, Plaintiff and the California State Class have sustained, and continue to sustain,
14 monetary and economic injuries as a direct and proximate result of Time Warner's violation of
15 the California Penal Code.

16 101. Plaintiff, on his own behalf and on behalf of the other members of the California
17 State Class, seeks judgment in her favor and against Time Warner, and awarding him and the
18 other members of the California State Class injunctive relief and the maximum statutory
19 damages available under California Penal Code.

20 **VII. JURY DEMAND**

21 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all
22 claims in this Complaint so triable.

1 **VIII. REQUEST FOR RELIEF**

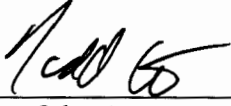
2 WHEREFORE, Plaintiff, individually and on behalf of the other members of the Classes
3 proposed in this Complaint, respectfully requests that the Court enter an Order awarding the
4 following relief:

- 5 A. Declaring that this action may be maintained as a class action, and certifying the
6 Classes as requested herein;
7 B. Enjoining Time Warner from the unlawful practices and statutory violations asserted
8 herein;
9 C. An Order awarding liquidated damages pursuant to CCPA;
10 D. An Order awarding punitive damages pursuant to CCPA;
11 E. An Order awarding compensatory damages pursuant to the California statutes and
12 common-law causes of action asserted herein;
13 F. An Order awarding attorneys' fees and costs pursuant to CCPA; and
14 G. Such other and further relief as may be just and proper.
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1 Dated: May 31, 2012

Respectfully submitted,

2 TODD BURTON, individually and on
3 behalf of all others similarly situated,

4
5 By: 
6 One of the Attorneys for Plaintiffs
and the Proposed Putative Classes

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18 **Pro hac vice* admittance to be sought

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20 4844-6064-0527, v. 1